

# **WEST VIRGINIA LEGISLATURE**

**2023 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 589**

By Senators Rucker and Rucker

[Originating in the Committee on School Choice;

reported on February 27, 2023]

1 A BILL to amend and reenact §18-8-1 of the Code of West Virginia, 1931, as amended; to amend  
2 said code by adding thereto two new sections, designated §18-8-1b and §18-8-1c; to  
3 amend and reenact §18-9A-25 of said code; to amend and reenact §18-31-2 of said code;  
4 to amend said code by adding thereto a new section, designated §18-31-2a; and to amend  
5 and reenact §18-31-3, §18-31-5, §18-31-6, §18-31-7, §18-31-8, §18-31-9, §18-31-10, and  
6 §18-31-11 of said code, all relating generally to nonpublic kindergarten, elementary, and  
7 secondary school education; reorganizing provisions related to exemptions from  
8 compulsory public school attendance; relocating requirements for students receiving home  
9 instructions to a new section of the code; relocating requirements for students attending a  
10 learning pod or microschool to a new section of the code; providing that the annual Hope  
11 Scholarship Program appropriation calculation will be based on the estimated number of  
12 participating students instead of the number of participating students in the prior year;  
13 providing that a student that is exempt from compulsory school attendance may participate  
14 in the Hope Scholarship Program if other eligibility requirements are met; defining terms;  
15 establishing eligibility requirements for the Hope Scholarship Program; permitting the  
16 State Treasurer to appear by designee at Hope Scholarship Board meetings; clarifying that  
17 all records and personally identifying information of a Hope Scholarship student, applicant,  
18 or parent is confidential and not subject to disclosure pursuant to the West Virginia  
19 Freedom of Information Act; establishing qualifying expenses under the Hope Scholarship  
20 Act; requiring the board to maintain and publish a list of all education service providers;  
21 authorizing the board to contract with independent auditors to complete Hope Scholarship  
22 Program audits; authorizing the board to promulgate legislative rules for the auditing of  
23 educational service providers; requiring education service providers conducting  
24 background screenings of employees and other persons in contact with students and to  
25 certify screening results to the board; and providing rule-making authority to disqualify  
26 education service providers based certain conduct.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.**

**§18-8-1. Compulsory school attendance; exemptions.**

1 (a) Exemption from the requirements of compulsory public school attendance established  
2 in §18-8-1a of this code shall be made on behalf of any child for the causes or conditions set forth  
3 in this section. Each cause or condition set forth in this section is subject to confirmation by the  
4 attendance authority of the county. A child who is exempt from compulsory school attendance  
5 under this section is not subject to prosecution under §18-8-2 of this code, nor is such a child a  
6 status offender as defined by §49-1-202 of this code.

7 (b) A child is exempt from the compulsory school attendance requirement set forth in  
8 §18-8-1a of this code if the requirements of this subsection, relating to instruction in a private,  
9 parochial, or other approved school, are met. The instruction shall be in a school approved by the  
10 county board and for a time equal to the instructional term set forth in §18-5-45 of this code. In all  
11 private, parochial, or other schools approved pursuant to this subsection, it is the duty of the  
12 principal or other person in control, upon the request of the county superintendent, to furnish to the  
13 county board such information and records as may be required with respect to attendance,  
14 instruction, and progress of students enrolled.

15 (c) A child is exempt from the compulsory school attendance requirement set forth in  
16 §18-8-1a of this code if ~~the requirements of either subdivision (1); or subdivision (2) of this~~  
17 ~~subsection, both relating to home instruction, are met~~ the child:

18 (1) Receives instruction in the home of the child or children or at some other place  
19 approved by the county board, for a time equal to the instructional term set forth in §18-5-45 of this  
20 code, and meets the requirements of §18-8-1b of this code; or

21 (2) Participates in a learning pod or microschool, pursuant to this subsection and meets the  
22 requirements of §18-8-1c of this code.

23 ~~(1) The instruction shall be in the home of the child or children or at some other place~~

24 approved by the county board and for a time equal to the instructional term set forth in §18-5-45 of  
25 this code. If the request for home instruction is denied by the county board, good and reasonable  
26 justification for the denial shall be furnished in writing to the applicant by the county board. The  
27 instruction shall be conducted by a person or persons who, in the judgment of the county  
28 superintendent and county board, are qualified to give instruction in subjects required to be taught  
29 in public elementary schools in the state. The person or persons providing the instruction, upon  
30 request of the county superintendent, shall furnish to the county board information and records as  
31 may be required periodically with respect to attendance, instruction, and progress of students  
32 receiving the instruction. The state board shall develop guidelines for the home schooling of  
33 special education students including alternative assessment measures to assure that satisfactory  
34 academic progress is achieved.

35 (2) The child meets the requirements set forth in this subdivision: *Provided*, That the county  
36 superintendent may, after a showing of probable cause, seek from the circuit court of the county an  
37 order denying home instruction of the child. The order may be granted upon a showing of clear and  
38 convincing evidence that the child will suffer neglect in his or her education or that there are other  
39 compelling reasons to deny home instruction.

40 (A) Upon commencing home instruction under this section the parent of a child receiving  
41 home instruction shall present to the county superintendent or county board a notice of intent to  
42 provide home instruction that includes the name, address, and age of any child of compulsory  
43 school age to be instructed and assurance that the child shall receive instruction in reading,  
44 language, mathematics, science, and social studies, and that the child shall be assessed annually  
45 in accordance with this subdivision. The person providing home instruction shall notify the county  
46 superintendent upon termination of home instruction for a child who is of compulsory attendance  
47 age. Upon establishing residence in a new county, the person providing home instruction shall  
48 notify the previous county superintendent and submit a new notice of intent to the superintendent  
49 of the new county of residence: *Provided*, That if a child is enrolled in a public school, notice of

50 ~~intent to provide home instruction shall be given on or before the date home instruction is to begin.~~

51 ~~(B) The person or persons providing home instruction shall submit satisfactory evidence of~~  
52 ~~a high school diploma or equivalent, or a post-secondary degree or certificate from a regionally~~  
53 ~~accredited institution, or from an institution of higher education that has been authorized to confer~~  
54 ~~a post-secondary degree or certificate in West Virginia by the West Virginia Council for Community~~  
55 ~~and Technical College Education or by the West Virginia Higher Education Policy Commission.~~

56 ~~I. Annually, the person or persons providing home instruction shall obtain an academic~~  
57 ~~assessment of the child for the previous school year in one of the following ways:~~

58 ~~(i) The child receiving home instruction takes a nationally normed standardized~~  
59 ~~achievement test published or normed not more than 10 years from the date of administration and~~  
60 ~~administered under the conditions as set forth by the published instructions of the selected test~~  
61 ~~and by a person qualified in accordance with the test's published guidelines in the subjects of~~  
62 ~~reading, language, mathematics, science, and social studies. The child is considered to have~~  
63 ~~made acceptable progress when the mean of the child's test results in the required subject areas~~  
64 ~~for any single year is within or above the fourth stanine or, if below the fourth stanine, shows~~  
65 ~~improvement from the previous year's results;~~

66 ~~(ii) The child participates in the testing program currently in use in the state's public~~  
67 ~~schools. The test shall be administered to the child at a public school in the county of residence.~~  
68 ~~Determination of acceptable progress shall be based on current guidelines of the state testing~~  
69 ~~program;~~

70 ~~(iii) A portfolio of samples of the child's work is reviewed by a certified teacher who~~  
71 ~~determines whether the child's academic progress for the year is in accordance with the child's~~  
72 ~~abilities. The teacher shall provide a written narrative about the child's progress in the areas of~~  
73 ~~reading, language, mathematics, science, and social studies and shall note any areas which, in~~  
74 ~~the professional opinion of the reviewer, show need for improvement or remediation. If the~~  
75 ~~narrative indicates that the child's academic progress for the year is in accordance with the child's~~

76 ~~abilities, the child is considered to have made acceptable progress; or~~

77 ~~(iv) The child completes an alternative academic assessment of proficiency that is mutually~~  
78 ~~agreed upon by the parent or legal guardian and the county superintendent.~~

79 ~~(D) A parent or legal guardian shall maintain copies of each student's Academic~~  
80 ~~Assessment for three years. When the annual assessment fails to show acceptable progress, the~~  
81 ~~person or persons providing home instruction shall initiate a remedial program to foster acceptable~~  
82 ~~progress. The county board upon request shall notify the parents or legal guardian of the child, in~~  
83 ~~writing, of the services available to assist in the assessment of the child's eligibility for special~~  
84 ~~education services. Identification of a disability does not preclude the continuation of home~~  
85 ~~schooling. In the event that the child does not achieve acceptable progress for a second~~  
86 ~~consecutive year, the person or persons providing instruction shall submit to the county~~  
87 ~~superintendent additional evidence that appropriate instruction is being provided.~~

88 ~~(E) The parent or legal guardian shall submit to the county superintendent the results of the~~  
89 ~~academic assessment of the child at grade levels three, five, eight, and 11, as applicable, by June~~  
90 ~~30 of the year in which the assessment was administered.~~

91 ~~(3) This subdivision applies to both home instruction exemptions set forth in subdivisions~~  
92 ~~(1) and (2) of this subsection. The county superintendent or a designee shall offer such~~  
93 ~~assistance, including textbooks, other teaching materials and available resources, all subject to~~  
94 ~~availability, as may assist the person or persons providing home instruction. Any child receiving~~  
95 ~~home instruction may upon approval of the county board exercise the option to attend any class~~  
96 ~~offered by the county board as the person or persons providing home instruction may consider~~  
97 ~~appropriate subject to normal registration and attendance requirements.~~

98 ~~(d) A child is exempt from the compulsory school attendance requirement set forth in~~  
99 ~~§18-8-1a of this code if the requirements of this subsection, relating to physical or mental~~  
100 ~~incapacity, are met. Physical or mental incapacity consists of incapacity for school attendance and~~  
101 ~~the performance of school work. In all cases of prolonged absence from school due to incapacity~~

102 of the child to attend, the written statement of a licensed physician or authorized school nurse is  
103 required. Incapacity shall be narrowly defined and in any case the provisions of this article may not  
104 allow for the exclusion of the mentally, physically, emotionally, or behaviorally handicapped child  
105 otherwise entitled to a free appropriate education.

106 (e) A child is exempt from the compulsory school attendance requirement set forth in  
107 §18-8-1a of this code if conditions rendering school attendance impossible or hazardous to the life,  
108 health, or safety of the child exist.

109 (f) A child is exempt from the compulsory school attendance requirement set forth in  
110 §18-8-1a of this code upon regular graduation from a standard senior high school or alternate  
111 secondary program completion as determined by the state board.

112 (g) A child is exempt from the compulsory school attendance requirement set forth in  
113 §18-8-1a of this code if the child is granted a work permit pursuant to the subsection. After due  
114 investigation the county superintendent may grant work permits to youths under the termination  
115 age designated in §18-8-1a of this code, subject to state and federal labor laws and regulations. A  
116 work permit may not be granted on behalf of any youth who has not completed the eighth grade of  
117 school.

118 (h) A child is exempt from the compulsory school attendance requirement set forth in  
119 §18-8-1a of this code if a serious illness or death in the immediate family of the child has occurred.  
120 It is expected that the county attendance director will ascertain the facts in all cases of such  
121 absences about which information is inadequate and report the facts to the county superintendent.

122 (i) A child is exempt from the compulsory school attendance requirement set forth in  
123 §18-8-1a of this code if the requirements of this subsection, relating to destitution in the home, are  
124 met. Exemption based on a condition of extreme destitution in the home may be granted only upon  
125 the written recommendation of the county attendance director to the county superintendent  
126 following careful investigation of the case. A copy of the report confirming the condition and school  
127 exemption shall be placed with the county director of public assistance. This enactment

128 contemplates every reasonable effort that may properly be taken on the part of both school and  
129 public assistance authorities for the relief of home conditions officially recognized as being so  
130 destitute as to deprive children of the privilege of school attendance. Exemption for this cause is  
131 not allowed when the destitution is relieved through public or private means.

132 (j) A child is exempt from the compulsory school attendance requirement set forth in  
133 §18-8-1a of this code if the requirements of this subsection, relating to church ordinances and  
134 observances of regular church ordinances, are met. The county board may approve exemption for  
135 religious instruction upon written request of the person having legal or actual charge of a child or  
136 children. This exemption is subject to the rules prescribed by the county superintendent and  
137 approved by the county board.

138 (k) A child is exempt from the compulsory school attendance requirement set forth in  
139 §18-8-1a of this code if the requirements of this subsection, relating to alternative private,  
140 parochial, church, or religious school instruction, are met. Exemption shall be made for any child  
141 attending any private school, parochial school, church school, school operated by a religious  
142 order, or other nonpublic school which elects to comply with the provisions of §18-28-1 *et seq.* of  
143 this code.

144 (l) Completion of the eighth grade does not exempt any child under the termination age  
145 designated in §18-8-1a of this code from the compulsory attendance provision of this article.

146 ~~(m) A child is exempt from the compulsory school attendance requirements set forth in~~  
147 ~~§18-8-1a of this code if the child is an eligible recipient participating in the Hope Scholarship~~  
148 ~~Program, as provided for in §18-31-1 *et seq.* of this code and provides a notice of intent to~~  
149 ~~participate in the Hope Scholarship Program to the county superintendent. The county~~  
150 ~~superintendent shall enter the following into the West Virginia Education Information System~~  
151 ~~(WVEIS):~~

152 ~~(1) The filing of the notice of intent pursuant to this subsection;~~

153 ~~(2) In the case of a Hope Scholarship recipient who chooses an individualized instructional~~



154 ~~program, annually, the child's test results or determination that a student is making academic~~  
155 ~~progress commensurate with his or her age and ability, as applicable, pursuant to §18-31-8(a)(4)~~  
156 ~~of this code; and~~

157 ~~(3) In the case of an eligible recipient enrolling in a participating school, annually, the filing~~  
158 ~~of a notice of enrollment pursuant to §18-31-11(a)(6) of this code.~~

159 ~~(n) A child is exempt from the compulsory school attendance requirement set forth in~~  
160 ~~§18-8-1a of this code if the child participates in a learning pod or microschool, pursuant to this~~  
161 ~~subsection.~~

162 ~~(1) For the purposes of this subsection:~~

163 ~~(A) "Learning pod" means a voluntary association of parents choosing to group their~~  
164 ~~children together to participate in their elementary or secondary academic studies as an~~  
165 ~~alternative to enrolling in a public school, private school, homeschool, or microschool, including~~  
166 ~~participation in an activity or service provided to the children in exchange for payment; and~~

167 ~~(B) "Microschool" means a school initiated by one or more teachers or an entity created to~~  
168 ~~operate a school that charges tuition for the students who enroll and is an alternative to enrolling in~~  
169 ~~a public school, private school, homeschool, or learning pod.~~

170 ~~(2) Upon beginning participation in a learning pod or microschool pursuant to this~~  
171 ~~subsection, the parent or legal guardian of the child participating shall present to the county~~  
172 ~~superintendent or county board a notice of intent to participate in a learning pod or microschool~~  
173 ~~that includes the name, address, and age of any child of compulsory school age participating and~~  
174 ~~assurance that the child shall receive instruction in reading, language, mathematics, science, and~~  
175 ~~social studies, and that the child shall be assessed annually in accordance with this subsection.~~

176 ~~The person providing instruction shall notify the county superintendent upon termination of~~  
177 ~~participation in a learning pod or microschool for a child who is of compulsory attendance age.~~

178 ~~Upon establishing residence in a new county, the person providing instruction shall notify the~~  
179 ~~previous county superintendent and submit a new notice of intent to the superintendent of the new~~

180 county of residence: *Provided*, That if a child is enrolled in a public school, notice of intent to  
181 participate in a learning pod or microschool shall be given on or before the date participation is to  
182 begin.

183 (3) ~~The person or persons providing instruction shall submit satisfactory evidence of a high~~  
184 ~~school diploma or equivalent, or a post-secondary degree or certificate from a regionally~~  
185 ~~accredited institution, or from an institution of higher education that has been authorized to confer~~  
186 ~~a post-secondary degree or certificate in West Virginia by the West Virginia Council for Community~~  
187 ~~and Technical College Education or by the West Virginia Higher Education Policy Commission.~~

188 (4) ~~Annually, the person or persons providing instruction shall obtain an academic~~  
189 ~~assessment of the child for the previous school year in one of the following ways:~~

190 (A) ~~The child participating in a learning pod or microschool takes a nationally normed~~  
191 ~~standardized achievement test published or normed not more than 10 years from the date of~~  
192 ~~administration and administered under the conditions as set forth by the published instructions of~~  
193 ~~the selected test and by a person qualified in accordance with the test's published guidelines in the~~  
194 ~~subjects of reading, language, mathematics, science, and social studies. The child is considered~~  
195 ~~to have made acceptable progress when the mean of the child's test results in the required subject~~  
196 ~~areas for any single year is within or above the fourth stanine or, if below the fourth stanine, shows~~  
197 ~~improvement from the previous year's results;~~

198 (B) ~~The child participates in the testing program currently in use in the state's public~~  
199 ~~schools. The test shall be administered to the child at a public school in the county of residence.~~  
200 ~~Determination of acceptable progress shall be based on current guidelines of the state testing~~  
201 ~~program;~~

202 (C) ~~A portfolio of samples of the child's work is reviewed by a certified teacher who~~  
203 ~~determines whether the child's academic progress for the year is in accordance with the child's~~  
204 ~~abilities. The teacher shall provide a written narrative about the child's progress in the areas of~~  
205 ~~reading, language, mathematics, science, and social studies and shall note any areas which, in~~

206 ~~the professional opinion of the reviewer, show need for improvement or remediation. If the~~  
207 ~~narrative indicates that the child's academic progress for the year is in accordance with the child's~~  
208 ~~abilities, the child is considered to have made acceptable progress; or~~

209 ~~(D) The child completes an alternative academic assessment of proficiency that is mutually~~  
210 ~~agreed upon by the parent or legal guardian and the county superintendent.~~

211 ~~(5) A parent or legal guardian shall maintain copies of each student's Academic~~  
212 ~~Assessment for three years. When the annual assessment fails to show acceptable progress, the~~  
213 ~~person or persons providing instruction shall initiate a remedial program to foster acceptable~~  
214 ~~progress. The county board upon request shall notify the parents or legal guardian of the child, in~~  
215 ~~writing, of the services available to assist in the assessment of the child's eligibility for special~~  
216 ~~education services. Identification of a disability does not preclude the continuation of participation~~  
217 ~~in a learning pod or microschool. In the event that the child does not achieve acceptable progress~~  
218 ~~for a second consecutive year, the person or persons providing instruction shall submit to the~~  
219 ~~county superintendent additional evidence that appropriate instruction is being provided.~~

220 ~~(6) The parent, legal guardian, learning pod, or microschool shall submit to the county~~  
221 ~~superintendent the results of the academic assessment of the child with the same frequency~~  
222 ~~prescribed in §18-8-1(c)(2)(E) of this code: *Provided*, That instead of the academic assessment~~  
223 ~~results being submitted individually, the learning pod or microschool may submit the school~~  
224 ~~composite results.~~

225 ~~(7) The county superintendent or a designee shall offer such assistance, including~~  
226 ~~textbooks, other teaching materials and available resources, all subject to availability, as may~~  
227 ~~assist the person or persons providing instruction. Any child participating in a learning pod or~~  
228 ~~microschool may upon approval of the county board exercise the option to attend any class offered~~  
229 ~~by the county board as the person or persons providing instruction may consider appropriate~~  
230 ~~subject to normal registration and attendance requirements.~~

231 ~~(8) No learning pod or microschool which meets the requirements of this subsection is~~

232 ~~subject to any other provision of law relating to education: *Provided*, That any learning pod or~~  
233 ~~microschool which has a student requiring special education instruction must comply with the~~  
234 ~~provisions of §18-20-11 of this code, including, but not limited to, placement of video cameras for~~  
235 ~~the protection of that exceptional student.~~

236 ~~(9) Making learning pods and microschools subject to the home instruction provisions and~~  
237 ~~requirements does not make learning pods and microschools the same as homeschooling.~~

**§18-8-1b. Requirements for home instruction.**

1 (a) A child receiving home instruction pursuant to the exemption from compulsory school  
2 attendance set forth in §18-8-1(c) of this code, must meet the following requirements:

3 (1) The instruction shall be in the home of the child or children or at some other place  
4 approved by the county board and for a time equal to the instructional term set forth in §18-5-45 of  
5 this code.

6 (2) If the request for home instruction is denied by the county board, good and reasonable  
7 justification for the denial shall be furnished in writing to the applicant by the county board.

8 (3) The instruction shall be conducted by a person or persons who, in the judgment of the  
9 county superintendent and county board, are qualified to give instruction in subjects required to be  
10 taught in public elementary schools in the state.

11 (4) The person or persons providing the instruction, upon request of the county  
12 superintendent, shall furnish to the county board information and records as may be required  
13 periodically with respect to attendance, instruction, and progress of students receiving the  
14 instruction.

15 (5) The state board shall develop guidelines for the home schooling of special education  
16 students including alternative assessment measures to assure that satisfactory academic  
17 progress is achieved.

18 (b) The county superintendent may, after a showing of probable cause, seek from the  
19 circuit court of the county an order denying home instruction of the child. The order may be granted

CS for SB 589

20 upon a showing of clear and convincing evidence that the child will suffer neglect in his or her  
21 education or that there are other compelling reasons to deny home instruction.

22 (c) Upon commencing home instruction under this section, the parent of a child receiving  
23 home instruction shall present to the county superintendent or county board a notice of intent to  
24 provide home instruction that includes the name, address, and age of any child of compulsory  
25 school age to be instructed and assurance that the child shall receive instruction in reading,  
26 language, mathematics, science, and social studies, and that the child shall be assessed annually  
27 in accordance with this subdivision. The person providing home instruction shall notify the county  
28 superintendent upon termination of home instruction for a child who is of compulsory attendance  
29 age. Upon establishing residence in a new county, the person providing home instruction shall  
30 notify the previous county superintendent and submit a new notice of intent to the superintendent  
31 of the new county of residence: *Provided*, That if a child is enrolled in a public school, notice of  
32 intent to provide home instruction shall be given on or before the date home instruction is to begin.

33 (d) The person or persons providing home instruction shall submit satisfactory evidence of  
34 a high school diploma or equivalent, or a post-secondary degree or certificate from a regionally  
35 accredited institution, or from an institution of higher education that has been authorized to confer  
36 a post-secondary degree or certificate in West Virginia by the West Virginia Council for Community  
37 and Technical College Education or by the West Virginia Higher Education Policy Commission.

38 (e) Annually, the person or persons providing home instruction shall obtain an academic  
39 assessment of the child for the previous school year in one of the following ways:

40 (1) The child receiving home instruction takes a nationally normed standardized  
41 achievement test published or normed not more than 10 years from the date of administration and  
42 administered under the conditions as set forth by the published instructions of the selected test  
43 and by a person qualified in accordance with the test's published guidelines in the subjects of

CS for SB 589

44 reading, language, mathematics, science, and social studies. The child is considered to have  
45 made acceptable progress when the mean of the child's test results in the required subject areas  
46 for any single year is within or above the fourth stanine or, if below the fourth stanine, shows  
47 improvement from the previous year's results;

48 (2) The child participates in the testing program currently in use in the state's public  
49 schools. The test shall be administered to the child at a public school in the county of residence.  
50 Determination of acceptable progress shall be based on current guidelines of the state testing  
51 program;

52 (3) A portfolio of samples of the child's work is reviewed by a certified teacher who  
53 determines whether the child's academic progress for the year is in accordance with the child's  
54 abilities. The teacher shall provide a written narrative about the child's progress in the areas of  
55 reading, language, mathematics, science, and social studies and shall note any areas which, in  
56 the professional opinion of the reviewer, show need for improvement or remediation. If the  
57 narrative indicates that the child's academic progress for the year is in accordance with the child's  
58 abilities, the child is considered to have made acceptable progress; or

59 (4) The child completes an alternative academic assessment of proficiency that is mutually  
60 agreed upon by the parent or legal guardian and the county superintendent.

61 (f) A parent or legal guardian shall maintain copies of each student's Academic  
62 Assessment for three years. When the annual assessment fails to show acceptable progress, the  
63 person or persons providing home instruction shall initiate a remedial program to foster acceptable  
64 progress. The county board upon request shall notify the parents or legal guardian of the child, in  
65 writing, of the services available to assist in the assessment of the child's eligibility for special  
66 education services. Identification of a disability does not preclude the continuation of home  
67 schooling. In the event that the child does not achieve acceptable progress for a second

CS for SB 589

68 consecutive year, the person or persons providing instruction shall submit to the county  
69 superintendent additional evidence that appropriate instruction is being provided.

70 (g) The parent or legal guardian shall submit to the county superintendent the results of the  
71 academic assessment of the child at grade levels three, five, eight, and 11, as applicable, by June  
72 30 of the year in which the assessment was administered.

73 (h) The county superintendent or a designee shall offer such assistance, including  
74 textbooks, other teaching materials and available resources, all subject to availability, as may  
75 assist the person or persons providing home instruction. Any child receiving home instruction may  
76 upon approval of the county board exercise the option to attend any class offered by the county  
77 board as the person or persons providing home instruction may consider appropriate subject to  
78 normal registration and attendance requirements.

79 (i) A child receiving home instruction pursuant to §18-8-1(c) of this code may also be  
80 referred to throughout this code as a “home school student.”

**§18-8-1c. Requirements for learning pods and microschools.**

1 (a) A child that participates in a learning pod or microschool pursuant to the exemption  
2 from compulsory school attendance set forth in §18-8-1(c) of this code, must meet the  
3 requirements of this section.

4 (b) For the purposes of this section:

5 (1) “Learning pod” means a voluntary association of parents choosing to group their  
6 children together to participate in their elementary or secondary academic studies as an  
7 alternative to enrolling in a public school, private school, homeschool, or microschool, including  
8 participation in an activity or service provided to the children in exchange for payment; and

9 (2) “Microschool” means a school initiated by one or more teachers or an entity created to  
10 operate a school that charges tuition for the students who enroll and is an alternative to enrolling in

11 a public school, private school, homeschool, or learning pod.

12 (c) Upon beginning participation in a learning pod or microschool pursuant to 18-8-1(c) of  
13 this code, the parent or legal guardian of the child participating shall present to the county  
14 superintendent or county board a notice of intent to participate in a learning pod or microschool  
15 that includes the name, address, and age of any child of compulsory school age participating and  
16 assurance that the child shall receive instruction in reading, language, mathematics, science, and  
17 social studies, and that the child shall be assessed annually in accordance with this section. The  
18 person providing instruction shall notify the county superintendent upon termination of  
19 participation in a learning pod or microschool for a child who is of compulsory attendance age.  
20 Upon establishing residence in a new county, the person providing instruction shall notify the  
21 previous county superintendent and submit a new notice of intent to the superintendent of the new  
22 county of residence: *Provided*, That if a child is enrolled in a public school, notice of intent to  
23 participate in a learning pod or microschool shall be given on or before the date participation is to  
24 begin.

25 (d) The person or persons providing instruction shall submit satisfactory evidence of a high  
26 school diploma or equivalent, or a post-secondary degree or certificate from a regionally  
27 accredited institution, or from an institution of higher education that has been authorized to confer  
28 a post-secondary degree or certificate in West Virginia by the West Virginia Council for Community  
29 and Technical College Education or by the West Virginia Higher Education Policy Commission.

30 (e) Annually, the person or persons providing instruction shall obtain an academic  
31 assessment of the child for the previous school year in one of the following ways:

32 (1) The child participating in a learning pod or microschool takes a nationally normed  
33 standardized achievement test published or normed not more than 10 years from the date of  
34 administration and administered under the conditions as set forth by the published instructions of  
35 the selected test and by a person qualified in accordance with the test's published guidelines in the  
36 subjects of reading, language, mathematics, science, and social studies. The child is considered



37 to have made acceptable progress when the mean of the child's test results in the required subject  
38 areas for any single year is within or above the fourth stanine or, if below the fourth stanine, shows  
39 improvement from the previous year's results;

40 (2) The child participates in the testing program currently in use in the state's public  
41 schools. The test shall be administered to the child at a public school in the county of residence.  
42 Determination of acceptable progress shall be based on current guidelines of the state testing  
43 program;

44 (3) A portfolio of samples of the child's work is reviewed by a certified teacher who  
45 determines whether the child's academic progress for the year is in accordance with the child's  
46 abilities. The teacher shall provide a written narrative about the child's progress in the areas of  
47 reading, language, mathematics, science, and social studies and shall note any areas which, in  
48 the professional opinion of the reviewer, show need for improvement or remediation. If the  
49 narrative indicates that the child's academic progress for the year is in accordance with the child's  
50 abilities, the child is considered to have made acceptable progress; or

51 (4) The child completes an alternative academic assessment of proficiency that is mutually  
52 agreed upon by the parent or legal guardian and the county superintendent.

53 (f) A parent or legal guardian shall maintain copies of each student's Academic  
54 Assessment for three years. When the annual assessment fails to show acceptable progress, the  
55 person or persons providing instruction shall initiate a remedial program to foster acceptable  
56 progress. The county board upon request shall notify the parents or legal guardian of the child, in  
57 writing, of the services available to assist in the assessment of the child's eligibility for special  
58 education services. Identification of a disability does not preclude the continuation of participation  
59 in a learning pod or microschool. In the event that the child does not achieve acceptable progress  
60 for a second consecutive year, the person or persons providing instruction shall submit to the  
61 county superintendent additional evidence that appropriate instruction is being provided.

62 (g) The parent, legal guardian, learning pod, or microschool shall submit to the county

63 superintendent the results of the academic assessment of the child with the same frequency  
64 prescribed in §18-8-1(c)(2)(E) of this code: *Provided*, That instead of the academic assessment  
65 results being submitted individually, the learning pod or microschool may submit the school  
66 composite results.

67 (h) The county superintendent or a designee shall offer such assistance, including  
68 textbooks, other teaching materials and available resources, all subject to availability, as may  
69 assist the person or persons providing instruction. Any child participating in a learning pod or  
70 microschool may upon approval of the county board exercise the option to attend any class offered  
71 by the county board as the person or persons providing instruction may consider appropriate  
72 subject to normal registration and attendance requirements.

73 (i) No learning pod or microschool which meets the requirements of this section is subject  
74 to any other provision of law relating to education: *Provided*, That any learning pod or microschool  
75 which has a student requiring special education instruction must comply with the provisions of  
76 §18-20-11 of this code, including, but not limited to, placement of video cameras for the protection  
77 of that exceptional student.

78 (j) Notwithstanding any provision of this code to the contrary, learning pod and microschool  
79 students shall have all of the educational rights and privileges this code makes available to home  
80 school students and may participate in any state or county program available to home school  
81 students: *Provided*, That nothing in this section may be construed as making learning pod or  
82 microschool students the same as homeschool students or as subjecting home school students to  
83 the requirements of this section.

## **ARTICLE 9A. PUBLIC SCHOOL SUPPORT.**

### **§18-9A-25. Funding for Hope Scholarship Program.**

1 (a) Notwithstanding any other provision of this article to the contrary, for fiscal year 2023  
2 and each fiscal year thereafter, in addition to all other amounts required by this article, the  
3 Department of Education shall include in its budget request, and the Governor shall include in

4 each budget bill submitted to the Legislature, an appropriation to the Department of Education for  
5 the greater of an amount not less than two percent of net public school enrollment adjusted for  
6 state aid purposes or the total number of ~~eligible Hope Scholarship applications received by the~~  
7 ~~Hope Scholarship Board, if available~~ of estimated Hope Scholarship applications for the fiscal  
8 year, multiplied by the prior year's statewide average net state aid allotted per pupil. The Hope  
9 Scholarship Board shall certify the estimated number of Hope Scholarship applications for the  
10 fiscal year to the Department of Education by December 10 of each year. The amount  
11 appropriated shall be transferred by the Department of Education to the Hope Scholarship Board  
12 to be used solely to meet the Hope Scholarship Program obligations set forth in §18-31-1 *et seq.* of  
13 this code except as otherwise provided in this section. The Governor shall also provide in each  
14 budget for the reappropriation for expenditure during the ensuing fiscal year the unused  
15 accumulated balance in the Hope Scholarship Fund. ~~to the Department of Education that was not~~  
16 ~~transferred to the Hope Scholarship Board due to an accumulated balance from prior years as~~  
17 ~~provided under subsection (b) of this section.~~

18 (b) ~~Each fiscal year, the amount required to be requested and included in the budget bill for~~  
19 ~~appropriation under subsection (a) of this section shall be reduced by the sum of:~~

20 (1) ~~Any unused accumulated amounts transferred to the Hope Scholarship Board for these~~  
21 ~~purposes from previous years; and~~

22 (2) ~~Any unused appropriations made to the Department of Education for these purposes~~  
23 ~~that were not transferred to the Hope Scholarship Board due to an accumulated balance from prior~~  
24 ~~years~~

## **ARTICLE 31. HOPE SCHOLARSHIP PROGRAM.**

### **§18-31-2. Definitions.**

1 The following words have the meanings ascribed to them unless the context clearly  
2 indicates a different meaning:

3 (1) "Account" or "scholarship" means a Hope Scholarship account, awarded pursuant to

4 this article, to which funds are allocated by the board to the parent or parents of an eligible Hope  
5 Scholarship student in order to pay qualifying education expenses to educate the student pursuant  
6 to the requirements and conditions of this article;

7 (2) "Board" means the Hope Scholarship Board created pursuant to §18-31-3 of this code;

8 (3) "Curriculum" means a complete course of study for a particular content area or grade  
9 level, including any supplemental materials required by the curriculum;

10 (4) "Education service provider" means a person or organization that receives payments  
11 from Hope Scholarship accounts to provide educational goods and services to Hope Scholarship  
12 students;

13 (5) "Eligible recipient" means a child who is eligible to receive the Hope Scholarship  
14 pursuant to §18-31-2a of this code.

15 (A) ~~Is a resident of this state; and~~

16 (B) ~~Is enrolled full-time and attending a public elementary or secondary school program in~~  
17 ~~this state for at least 45 calendar days during an instructional term at the time of application and~~  
18 ~~until an award letter is issued by the board under §18-31-5(c) of this code, or enrolled full-time in a~~  
19 ~~public elementary or secondary school program in this state for the entire instructional term the~~  
20 ~~previous year, or is eligible at the time of application to enroll in a kindergarten program in this state~~  
21 ~~pursuant to §18-8-1a of this code, except that if on July 1, 2024, the participation rate of the~~  
22 ~~combined number of students in the Hope Scholarship Program and students eligible who have~~  
23 ~~applied to participate in the Hope Scholarship program during the previous school year is less than~~  
24 ~~five percent of net public school enrollment adjusted for state aid purposes for the previous school~~  
25 ~~year, then, effective July 1, 2026, a child is considered to meet the requirements of this paragraph~~  
26 ~~if he or she is enrolled, eligible to be enrolled, or required to be enrolled in a kindergarten program~~  
27 ~~or public elementary or secondary school program in this state at the time of application~~

28 (6) "Hope scholarship funds" means the moneys deposited in a Hope Scholarship  
29 student's account in accordance with the requirements of this article.

30 (7) "Hope scholarship student" means a student who receives a scholarship pursuant to  
31 this article;

32 (8) "Parent" means a biological parent, legal guardian, custodian, or other person with  
33 legal authority to act on behalf of an eligible recipient or Hope Scholarship student;

34 (9) "Participating school" means any private school that provides education to elementary  
35 and/or secondary students and has notified the board of its intention to participate in the program  
36 and comply with the program's requirements;

37 (10) "Public school" means a kindergarten, elementary, or secondary county school, a  
38 public charter school, a virtual public charter school, or any other publicly supported elementary or  
39 secondary school in this state.

40 ~~(10)~~ (11) "Resident school district" means the county school district in which the student  
41 resides; and

42 ~~(11)~~ (12) "Treasurer" means the West Virginia State Treasurer.

**§18-31-2a. Eligibility requirements.**

1 (a) To participate in the Hope Scholarship Program, a student must:

2 (1) Be a resident of the State of West Virginia;

3 (2) Have filed a notice of intent pursuant to §18-8-1 of this code to pursue a kindergarten,  
4 elementary, or secondary educational option authorized by that section in lieu of compulsory  
5 public school attendance for the applicable year of participation in the program;

6 (3) Meet all requirements of this code and the Department of Education related to the  
7 exemption in §18-8-1 of this code that applies to the student; and

8 (4) Meet one of the following criteria:

9 (A) Is eligible at the time of application to enroll in a kindergarten program in this state  
10 pursuant to §18-8-1a of this code;

11 (B) Is enrolled full-time in a public school program in this state for at least 45 calendar days  
12 during an instructional term at the time of application and until an award letter is issued by the

13 board pursuant to §18-31-5(c) of this code; or

14 (C) Is eligible to renew his or her Hope Scholarship according to §18-31-8 of this code.

15 (b) Notwithstanding subsection (a) of this section, if on July 1, 2024, the participation rate  
16 of the combined number of students in the Hope Scholarship Program and students eligible who  
17 have applied to participate in the Hope Scholarship program during the previous school year is  
18 less than five percent of net public school enrollment adjusted for state aid purposes for the  
19 previous school year, a student is eligible to participate in the Hope Scholarship Program  
20 beginning on July 1, 2026, if he or she meets the following eligibility criteria:

21 (1) The student is a resident of West Virginia; and

22 (2) On or after July 1, 2026, the student is enrolled, eligible to be enrolled, or required to be  
23 enrolled in a public school program in this state at the time of application.

24 (c) Notwithstanding subsection (a) of this section, a child is not eligible to participate or  
25 continue to participate in the Hope Scholarship Program if:

26 (1) The student has successfully completed a secondary education program;

27 (2) The student is no longer a resident of the State of West Virginia; or

28 (3) The student is enrolled full-time in a public school.

**§18-31-3. West Virginia Hope Scholarship board; members; terms; compensation; proceedings generally.**

1 (a) The West Virginia Hope Scholarship Program shall be administered by the West  
2 Virginia Hope Scholarship Board.

3 (b) The board shall consist of nine members and include the following:

4 (1) The State Treasurer or his or her designee;

5 (2) The State Auditor, or his or her designee;

6 (3) The State Attorney General, or his or her designee, as an ex officio nonvoting member;

7 (4) The State Superintendent of Schools, or his or her designee, as an ex officio nonvoting  
8 member;

9 (5) The Chancellor of Higher Education, or his or her designee, as an ex officio nonvoting  
10 member;

11 (6) The Director of the Herbert Henderson Office of Minority Affairs, or his or her designee,  
12 as an ex officio nonvoting member; and

13 (7) Three members appointed by the Governor with the advice and consent of the Senate  
14 who are parents of Hope Scholarship students, or for the initial appointments of board members  
15 following the effective date of this article, parents who intend to apply for the Hope Scholarship on  
16 behalf of eligible recipients, to be appointed as follows:

17 (A) Only state residents are eligible for appointment to the board;

18 (B) The members shall reside in geographically diverse areas of the state;

19 (C) Members shall be initially appointed to staggered terms as follows:

20 (i) One member appointed by the Governor to a one-year term;

21 (ii) One member appointed by the Governor to a two-year term; and

22 (iii) One member each appointed by the Governor to a three-year term.

23 After the initial staggering of terms, appointed board members shall serve for three-year  
24 terms and are eligible for reappointment at the expiration of their terms; and

25 (D) If there is a vacancy among appointed members, the vacancy shall be filled by  
26 appointment to the unexpired term of a person meeting the requirements of this section by the  
27 Governor with the advice and consent of the Senate. Members of the board shall serve until the  
28 later of the expiration of the term for which the member was appointed or the appointment of his or  
29 her successor.

30 (c) Members of the board shall serve without compensation. The board may reimburse  
31 members for all reasonable and necessary expenses, including travel expenses, actually incurred  
32 by board members in the conduct of their official duties. Any expense reimbursements shall be  
33 made from the West Virginia Hope Scholarship Program Expense Fund at the same rate paid to  
34 state employees.

35 (d) The Treasurer is the chairman and presiding officer of the board. The Treasurer may  
36 provide office space and staff to the board upon request of the board.

37 (e) The State Superintendent of Schools may provide staff to the board, upon request of  
38 the board.

39 (f) A majority of the members of the board constitutes a quorum for the transaction of the  
40 business of the board.

41 (g) Members of the board are subject to the ethical standards and financial disclosure  
42 requirements of the West Virginia Governmental Ethics Act in Chapter 6B of this code.

**§18-31-5. Award of Hope Scholarships.**

1 (a) The Hope Scholarship Program is established to provide the option for a parent to  
2 better meet the individual education needs of his or her eligible child. The program shall be  
3 operational no later than July 1, 2022.

4 (b) The board shall create a standard application form that a parent can submit to establish  
5 his or her student's eligibility for the award of Hope Scholarship funds, to be placed in a personal  
6 education savings account to be used for qualifying education expenses on behalf of the eligible  
7 recipient as provided for in §18-31-7 of this code. Information about scholarship funds and the  
8 application process shall be made available on the board's website.

9 (c) The board shall make such applications available no later than March 1, 2022 and shall  
10 begin accepting applications immediately thereafter. The board shall ensure that an application  
11 window of at least 45 days is open at least quarterly. The board may update the application as  
12 needed. The board shall issue an award letter to eligible recipients within 45 days of receipt of a  
13 completed application and all required documentation.

14 (d) The board shall approve an application for a Hope Scholarship if all of the following  
15 circumstances are met:

16 (1) A parent submits an application for a Hope Scholarship in accordance with the  
17 legislative rules promulgated by the board;



18 (2) A student on whose behalf the parent is applying is an eligible recipient, as provided for  
19 in ~~§18-31-2(5)~~ §18-31-2a of this code;

20 (3) The parent signs an agreement with the board, promising to do all of the following:

21 (A) To provide an education for the eligible recipient in at least the subjects of reading,  
22 language, mathematics, science, and social studies;

23 (B) To use the Hope Scholarship funds exclusively for qualifying expenses as provided for  
24 in §18-31-7 of this code;

25 (C) To comply with the rules and requirements of the Hope Scholarship program; and

26 (D) To afford the Hope Scholarship student opportunities for educational enrichment such  
27 as organized athletics, art, music, or literature; and

28 (4) The board confirms with the West Virginia Department of Education that the student  
29 satisfies ~~§18-31-2(5)~~ §18-31-2a of this code: *Provided*, That if the department does not reply within  
30 30 days, this criteria is considered satisfied.

31 (e) ~~An application for a Hope Scholarship is~~ All records accepted or maintained by the  
32 Board containing personally identifying information of a Hope Scholarship student, applicant, or  
33 parent are confidential and not a public record subject to release pursuant to the West Virginia  
34 Freedom of Information Act, as codified in §29B-1-1 *et seq.* of this code.

**§18-31-6. Funding of Hope Scholarships; program and expense funds.**

1 (a) There is hereby created in the State Treasury a special revenue fund designated and  
2 known as the West Virginia Hope Scholarship Program Fund. The fund shall be administered by  
3 the Treasurer and shall consist of funds transferred by the Department of Education in accordance  
4 with §18-9A-25 of this code. All interest and other returns derived from the deposit and investment  
5 of moneys in the Hope Scholarship Fund shall be credited to the fund. Any balance, including  
6 accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not  
7 revert to the General Revenue Fund but shall remain in the fund and be expended as provided by  
8 this section.

9 (b) The amount of Hope Scholarship funds made available to an eligible recipient on a  
10 yearly basis shall be equal to 100 percent of the prior year's statewide average net state aid share  
11 allotted per pupil based on net enrollment adjusted for state aid purposes, subject to the provisions  
12 of subsection (c) of this section: *Provided*, That the amount of the funding to an eligible recipient  
13 who is awarded a Hope Scholarship account for less than a full fiscal year shall be prorated based  
14 on the portion of the fiscal year the eligible recipient is awarded the Hope Scholarship account. On  
15 or prior to the submission of the Department of Education's budget request each year, the board  
16 shall notify the Department of Education of the total number of eligible Hope Scholarship  
17 applications received by the board, for purposes of facilitating the necessary transfer of moneys  
18 pursuant to §18-9A-25 of this code.

19 (c) Expenditures from the Hope Scholarship Fund shall be limited to the purposes set forth  
20 in this article: *Provided*, That an amount not to exceed five percent of the fund shall be transferred  
21 annually to the West Virginia Hope Scholarship Program Expense Fund established in subsection  
22 (h) of this section to cover the annual administrative costs of the Hope Scholarship Program. If the  
23 number of Hope Scholarship accounts increases significantly after any fiscal year, the Treasurer  
24 may request an appropriation by the Legislature to the West Virginia Hope Scholarship Program  
25 Expense Fund in an amount equal to the administrative costs associated with the increase in Hope  
26 Scholarship accounts.

27 (d) The first deposit of Hope Scholarship funds into an eligible recipient account shall be  
28 subject to the execution of the parental agreement required by §18-31-5 of this code. Upon  
29 execution of the required parental agreement, and subject to the provisions of §18-31-9(e) of this  
30 code, one half of the total annually required deposit shall be made no later than August 15 of every  
31 year into an eligible recipient's Hope Scholarship account, and one half of the total annually  
32 required deposit shall be made no later than January 15 of every year. Any funds remaining in a  
33 Hope Scholarship account at the end of the fiscal year may be carried over to the next fiscal year  
34 upon successful renewal of the account.

35 (e) Funds deposited in a student's Hope Scholarship account, other than those funds  
36 expended on transportation services pursuant to §18-31-7(44) (12) of this code, do not constitute  
37 taxable income to the parent or the Hope Scholarship student.

38 (f) The board shall continue to make deposits into an eligible recipient's Hope Scholarship  
39 account in accordance with the provisions of this section unless any of the following conditions  
40 have occurred:

41 (1) A parent of an eligible recipient ~~fails to renew a Hope Scholarship account or withdraws~~  
42 ~~from the Hope Scholarship Program or the Hope Scholarship account is not renewed for any~~  
43 ~~reason set forth in this subsection or the information required by §18-31-8 of this code is not~~  
44 ~~verified;~~

45 (2) The board determines that a student is no longer eligible for a Hope Scholarship;

46 (3) The board suspends or revokes participation in the Hope Scholarship Program for  
47 failure to comply with the requirements of this article;

48 (4) The Hope Scholarship student successfully completes a secondary education  
49 program; or

50 (5) The Hope Scholarship student reaches 21 years of age.

51 (g) If any of the conditions in subsection (f) of this section occur, the board shall notify the  
52 parent that the eligible recipient's account will be closed in 45 calendar days. If a parent fails to  
53 adequately address the condition or conditions upon which closure is based or does not respond  
54 within 30 calendar days of receipt of notice, the board shall close the account and any remaining  
55 moneys shall be returned to the state.

56 (h)(1) There is hereby created in the State Treasury a special revenue fund designated and  
57 known as the West Virginia Hope Scholarship Program Expense Fund. The account shall consist  
58 of moneys received pursuant to this section; moneys, if any, transferred from special revenue  
59 funds administered by the Treasurer; or any governmental or private grants and any state general  
60 fund appropriations, if any, for the Hope Scholarship Program. All interest and other returns

61 derived from the deposit and investment of moneys in the Hope Scholarship Program Expense  
62 Fund shall be credited to the fund. Any balance, including accrued interest and other returns,  
63 remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund  
64 but shall remain in the fund and be expended as provided by this section.

65 (2) All expenses incurred by the Treasurer or the board in developing and administering  
66 the Hope Scholarship Program shall be payable from the West Virginia Hope Scholarship  
67 Expense Fund.

**§18-31-7. Qualifying expenses for Hope Scholarship accounts.**

1 (a) Parents of a Hope Scholarship student shall agree to use the funds deposited in their  
2 student's Hope Scholarship account only for the following qualifying expenses to educate the  
3 student pursuant to an exemption from compulsory school attendance under §18-8-1 of this code:

4 (1) Ongoing services provided by a public school district pursuant to §18-31-8(f) of this  
5 code, including without limitation, individual classes and extracurricular activities and programs;

6 (2) Tuition and fees at a participating school;

7 (3) Tuition and fees at a microschool or learning pod: *Provided*, That none of the funds  
8 deposited into a student's Hope Scholarship account are paid to a member of the student's  
9 immediate family;

10 ~~(3)~~ (4) Tutoring services provided by an individual or a tutoring facility: *Provided*, That such  
11 tutoring services are not provided by a member of the Hope Scholarship student's immediate  
12 family;

13 ~~(4)~~ (5) Fees for nationally standardized assessments, advanced placement examinations,  
14 any examinations related to college or university admission, and tuition and/or fees for preparatory  
15 courses for the aforementioned exams;

16 ~~(5)~~ (6) Tuition and fees for programs of study or the curriculum of courses that lead to an  
17 industry-recognized credential that satisfies a workforce need;

18 ~~(6)~~ (7) Tuition and fees for nonpublic online learning programs;

- 19           ~~(7)~~ (8) Tuition and fees for alternative education programs;
- 20           ~~(8)~~ (9) Fees for after-school or summer education programs;
- 21           ~~(9)~~ (10) Educational services and therapies, including, but not limited to, occupational,  
22 behavioral, physical, speech-language, and audiology therapies;
- 23           ~~(10)~~ (11) Curriculum as defined in §18-31-2 of this code;
- 24           ~~(11)~~ (12) Fees for transportation paid to a fee-for-service transportation provider for the  
25 student to travel to and from an education service provider; and
- 26           (13) Any other educational supplies as considered appropriate by the board such as  
27 books, educational games, and other enhancements to curriculum;
- 28           (14) Any other basic educational supplies, including, but not limited to, paper, writing  
29 utensils, scissors, etc; and
- 30           ~~(12)~~ (15) Any other qualified expenses as approved by the board established pursuant to  
31 §18-31-3 of this code.

32           (b) Hope Scholarship funds may only be used for educational purposes in accordance with  
33 subsection (a) of this section. Nothing in this section requires that a Hope Scholarship student be  
34 enrolled, full- or part-time, in either a private school or nonpublic online school.

35           (c) Hope Scholarship funds may not be refunded, rebated, or shared with a parent or  
36 student in any manner except that reimbursement for qualified educational supplies specified in  
37 §18-31-7(a)(13) of this code may be reimbursed. Any refund or rebate for goods or services  
38 purchased with Hope Scholarship funds shall be credited directly to a student's Hope Scholarship  
39 account.

40           (d) Nothing in this section prohibits the parents of a Hope Scholarship student from making  
41 payments for the costs of educational goods and services not covered by the funds in their  
42 student's Hope Scholarship account. However, personal deposits into a Hope Scholarship  
43 account are not permitted.

**§18-31-8. Renewal of Hope Scholarship accounts; participation in public school system.**

1           ~~(a) A parent must renew an eligible recipient's Hope Scholarship on an annual basis.~~  
2 ~~Notwithstanding any changes in eligibility, a Hope Scholarship student who has previously~~  
3 ~~qualified for a Hope Scholarship account remains eligible to apply for renewal~~ Annual renewal of  
4 an eligible recipient's Hope Scholarship shall be automatic until one of the conditions set forth in  
5 §18-31-6(f) occurs: *Provided*, That the board shall verify with the Department of Education the  
6 following information by July 1 of every year:

- 7           (1) A list of all active Hope Scholarship Accounts;  
8           (2) The resident school district of each Hope Scholarship student;  
9           ~~(3) For a Hope Scholarship student who chooses to attend a participating school, annual~~  
10 ~~confirmation of his or her continued attendance at a nonpublic school that complies with all~~  
11 ~~requirements that other nonpublic school students must comply with; and~~

12           ~~(4) For a Hope Scholarship student who chooses an individualized instructional program:~~

13           ~~(A) (i) He or she has annually taken a nationally normed standardized achievement test of~~  
14 ~~academic achievement;~~

15           ~~(ii) The mean of the child's test results in the subject areas of reading, language,~~  
16 ~~mathematics, science and social studies for any single year is within or above the fourth stanine or,~~  
17 ~~if below the fourth stanine, show improvement from the previous year's results; and~~

18           ~~(iii) The child's test results are reported to the county superintendent; or~~

19           ~~(B) (i) A certified teacher conducts a review of the student's academic work annually;~~

20           ~~(ii) The certified teacher determines that the student is making academic progress~~  
21 ~~commensurate with his or her age and ability; and~~

22           ~~(iii) The certified teacher's determination is reported to the county superintendent.~~

23           (3) That the student has met all requirements for the student's exemption from compulsory  
24 school attendance under §18-8-1 of this code.

25           (b) If a student is required to submit documentation of academic progress or nonpublic  
26 school attendance to the county superintendent or the Board of Education pursuant to the

27 student's exemption from compulsory school attendance under §18-8-1 of this code, the student  
28 must submit the information at least annually to participate in the Hope Scholarship Program:  
29 Provided, That nothing in this Act may be construed to impose additional requirements on  
30 students who are exempt from compulsory school attendance and who do not participate in the  
31 Hope Scholarship Program.

32 (b) Each county superintendent shall submit the test results and determinations reported to  
33 him or her pursuant to subsection (a) of this section to the Department of Education each year on  
34 or before June 15.

35 (c) If ~~a parent fails to renew~~ an eligible recipient's Hope Scholarship is not renewed for any  
36 reason set forth in §18-31-6(f) of this code or the information in subsection (a) of this section  
37 cannot be verified, the board shall notify the parent that the eligible recipient's account will be  
38 closed in 45 calendar days. If a parent ~~chooses not to renew or~~ does not respond within 30  
39 calendar days of receipt of notice, the board shall close the account and any remaining moneys  
40 shall be returned to the state.

41 (d) If an eligible recipient decides to return to the Hope Scholarship Program after ~~failing to~~  
42 renew his or her Hope Scholarship is not renewed, they must reapply.

43 (e) The board, in consultation with the Department of Education, may adopt rules and  
44 policies to provide the least disruptive process for Hope Scholarship students who desire to stop  
45 receiving Hope Scholarship payments and return full-time to a public school.

46 (f) The board, in consultation with the Department of Education, may adopt rules and  
47 policies for Hope Scholarship students who want to continue to receive services provided by a  
48 public school or district, including individual classes and extracurricular programs, in combination  
49 with an individualized instructional program. The board, in consultation with the Department of  
50 Education, shall ensure that any public school or school district providing such services receives  
51 the appropriate pro rata share of a student's Hope Scholarship funds based on the percentage of  
52 total instruction provided to the student by the public school or school district. County boards shall

53 charge tuition to Hope Scholarship students who enroll for services in a public school within the  
54 county. Hope Scholarship students who enroll for services part-time in public school shall not be  
55 included in net enrollment for state aid funding purposes under §18-9A-2 of this code. Nothing in  
56 this subsection prohibits a Hope Scholarship student from using the funds deposited in his or her  
57 account on both services provided by a public school or district and other qualifying expenses as  
58 provided for in §18-31-7 of this code.

**§18-31-9. Administration of Hope Scholarship accounts.**

1 (a) In addition to the duties, obligations, and authority stated in this section and in other  
2 parts of this article, the board has the following duties, obligations, and authority with respect to the  
3 administration of Hope Scholarship accounts:

4 (1) To maintain an updated list of participating schools and other education service  
5 providers and shall ensure that the list is publicly available through various sources, including the  
6 Internet;

7 (2) To provide parents with a written explanation of the allowable uses of Hope Scholarship  
8 funds, the responsibilities of parents, the duties of the board and the role of any private financial  
9 management firms or other private organizations that the board may contract with to administer  
10 the Hope Scholarship Program or any aspect of the program; and

11 (3) To ensure that parents of students with a disability receive notice that participation in  
12 the Hope Scholarship Program is a parental placement under 20 U.S.C. § 1412 of the Individuals  
13 with Disabilities Education Act (IDEA) along with an explanation of the rights that parentally placed  
14 students possess under (IDEA) and any applicable state laws and regulations.

15 (b) The board may contract with private organizations to administer the Hope Scholarship  
16 Program. This includes, but is not limited to, private financial management firms to manage Hope  
17 Scholarship accounts.

18 (c) The board may contract with independent auditors or the state auditor to complete the  
19 audits authorized in §18-31-10 of this code.



20           ~~(e)~~ (d) The board shall implement, or contract with a private organization to implement,  
21 after undergoing the Purchasing Division's competitive bid process, a commercially viable, cost  
22 effective, and parent-friendly system for payment for services from Hope Scholarship accounts to  
23 participating schools or education service providers, including, but not limited to, the use of debit  
24 cards or other electronic or online fund transfers: *Provided*, That a Hope Scholarship account may  
25 not be reduced for debit card or electronic payment fees.

26           ~~(d)~~ (e) The board shall also seek to implement a commercially viable, cost-effective, and  
27 parent-friendly system for publicly rating, reviewing, and sharing information about participating  
28 schools and education service providers, ideally as part of the same system that facilitates the  
29 electronic or online funds transfers so as to create a one-stop-shop for parents and Hope  
30 Scholarship students.

31           ~~(e)~~ (f) If an education service provider requires partial payment of tuition or fees prior to the  
32 start of the academic year to reserve space for a Hope Scholarship student admitted to the  
33 education service provider, such partial payment may be paid prior to the start of the school year in  
34 which the Hope Scholarship is awarded, and deducted in an equitable manner from subsequent  
35 Hope Scholarship deposits to ensure adequate funds remain available throughout the school  
36 year; but if a Hope Scholarship student decides not to use the education service provider, the  
37 partial reservation payment must be returned to the board by such education service provider and  
38 credited to the student's Hope Scholarship account.

39           ~~(f)~~ (g) The board may accept gifts and grants from any source to cover administrative  
40 costs, to inform the public about the Hope Scholarship Program, or to provide additional funding  
41 for Hope Scholarship Accounts.

42           ~~(g)~~ (h) The board may propose legislative rules for legislative approval pursuant to  
43 §29A-3-1 *et seq.* of this code, including emergency rules, if necessary, to meet timelines set forth  
44 in this article, that are not inconsistent with this article and that are necessary for the administration  
45 of this article, including but not limited to:

46 (1) Establishing or contracting for the establishment of a fraud reporting system;

47 (2) Policies that require a surety bond for education service providers receiving more than  
48 \$100,000 in Hope Scholarship funds;

49 (3) Procedures for refunding payments from education service providers back to Hope  
50 Scholarship accounts; and

51 (4) Procedures for entering into reciprocal agreements with other state education savings  
52 account agencies or entities, whether public or private, to recognize and allow education service  
53 providers approved in other states to receive payments from Hope Scholarship accounts under  
54 this article.

55 ~~(h)~~ (i) The rules or policies adopted by the board should avoid excessive bureaucracy and  
56 overly prescriptive mandates and instead shall focus on encouraging participation in the program  
57 and encouraging education service providers to provide parents and Hope Scholarship students  
58 with a broad array of educational options.

**§18-31-10. Auditing of Hope Scholarship Program; suspension of accounts and providers.**

1 (a) The board may propose legislative rules for legislative approval pursuant to §29A-3-1 *et*  
2 *seq.* of this code for the auditing of individual Hope Scholarship accounts and shall conduct or  
3 contract for the random auditing of individual Hope Scholarship accounts as needed to ensure  
4 compliance with the requirements of this article and rules promulgated pursuant to this article.

5 (b) As part of the auditing process, the board may remove a parent or eligible recipient from  
6 the Hope Scholarship program and close a Hope Scholarship account for failure to comply with the  
7 terms of the parental agreement required by §18-31-5 of this code, failure to comply with the  
8 applicable laws, failure of the student to remain eligible, or intentional and fraudulent misuse of  
9 Hope Scholarship funds: *Provided*, That the board shall create procedures to ensure that a fair  
10 process exists to determine the removal of a parent or eligible recipient from the Hope Scholarship  
11 program and a parent or Hope Scholarship student may appeal the decision to make the student  
12 ineligible for funds to the board.

13 ~~(c) The board may conduct or contract for the audit of education service providers~~  
14 ~~accepting payments from Hope Scholarship accounts, if it determines that the education service~~  
15 ~~provider has:~~

16 ~~(1) Intentionally and substantially misrepresented information or failed to refund any~~  
17 ~~overpayments in a timely manner; or~~

18 ~~(2) Routinely failed to provide students with promised educational goods or services~~

19 (c) The board may propose legislative rules for legislative approval pursuant to §29A-3-1 et  
20 seq. of this code for the auditing of education service providers and shall conduct or contract for  
21 the random auditing of individual providers as needed to ensure compliance with the requirements  
22 of this article and rules promulgated pursuant to this article: *Provided*, That the audit is limited to  
23 financial transactions with the Hope Scholarship recipient.

24 (d) If the board determines that an education service provider has intentionally and  
25 substantially misused Hope Scholarship funds, the board may bar the education service provider  
26 from continuing to receive payments. The board shall create procedures to ensure that a fair  
27 process exists to determine whether an education service provider may be barred from receiving  
28 payment from Hope Scholarship accounts and an education service provider may appeal a  
29 decision to bar it from receiving payments to the board. If the board bars an education service  
30 provider from receiving payments from Hope Scholarship accounts, it shall notify parents and  
31 students of its decision as quickly as possible.

32 (e) If the board obtains evidence of potential fraudulent use of Hope Scholarship funds, it  
33 may refer suspected cases to the State Auditor for purposes of investigation, collection, and  
34 potential criminal investigation.

**§18-31-11. Requirements for and rights of education service providers.**

1 (a) To be eligible to accept payments from a Hope Scholarship account, an education  
2 service provider shall:

3 (1) Submit notice to the board that they wish to participate in the Hope Scholarship

4 Program;

5 (2) Provide participating parents with a receipt for all qualifying educational expenses for  
6 the Hope Scholarship student;

7 (3) Agree not to refund, rebate, or share Hope Scholarship funds with parents or students  
8 in any manner, except that funds may be remitted or refunded to a Hope Scholarship account in  
9 accordance with §18-31-7(c) of this code;

10 (4) Certify that it will not discriminate on any basis prohibited by 42 U.S.C. 1981;

11 (5) ~~Agree to~~ Submit any employee or other person who will have contact with Hope  
12 Scholarship student receiving services from the provider to a criminal background check and may  
13 disqualify the service provider based upon the results of the criminal background check: *Provided,*  
14 That the Board may promulgate rules to disqualify a person from serving as an education service  
15 provider, based on conviction of sexual offenses or felonies involving violence to the person.

16 (6) In the case of a participating school, provide notice of enrollment annually to the county  
17 superintendent of any student for which a student's tuition is being paid through the Hope  
18 Scholarship Program.

19 (b) This article does not limit the independence or autonomy of an education service  
20 provider or make the actions of an education service provider the actions of the state government.

21 (c) Education service providers shall be given maximum freedom to provide for the  
22 educational needs of Hope Scholarship students without governmental control.

23 (d) A participating school or education service provider is not required to alter its creed,  
24 practices, admission policy, hiring policy or curriculum in order to accept eligible recipients whose  
25 parents pay tuition or fees from a Hope Scholarship account pursuant to this article: *Provided,*  
26 That an education service provider is prohibited from requiring a student or family to pay tuition or  
27 fees above the provider's regular tuition or fee schedule based, in whole or in part, upon a student  
28 or family member's participation in the Hope Scholarship program.

29 (e) This article does not expand the regulatory authority of the state, its officers, or any

30 school district to impose any additional regulation of education service providers beyond those  
31 necessary to enforce the requirements of the program.

32